

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2013-419619-002 DT

05/24/2016

HON. TERESA SANDERS

CLERK OF THE COURT
S. Radwanski
Deputy

STATE OF ARIZONA

MARY-ELLEN WALTER

v.

DARNELL MOSES ALVAREZ (002)

MICHAEL ZIEMBA
ANNA M UNTERBERGER

CAPITAL CASE MANAGER

UNDER ADVISEMENT RULING

The Court has read and considered *Defendant's Motion to Strike the Death Notice, or Alternatively, Motion to Instruct the Jurors that a Decision that Death is the Appropriate Verdict Must be Made Pursuant to the Evidentiary Standard of Beyond a Reasonable Doubt and with Utmost Certainty*, the State's response, and the defendant's reply. The Court has also considered the arguments of counsel. The Court finds and orders as follows:

Defendant argues that Arizona's capital sentencing scheme is unconstitutional because it "fails to designate the evidentiary standard that the jurors must use when making their ultimate finding regarding guilt [sic] pursuant to A.R.S. §13-752(H)." (Motion at 1). If the Court denies this motion, he alternatively moves that in the penalty phase, the jury be instructed that its verdict regarding sentence be found "beyond a reasonable doubt and with utmost certainty." (*Id.*).

The Arizona Supreme Court has held that neither party bears the burden of proving whether death or life is the appropriate verdict. *State ex rel. Thomas v. Granville (Baldwin)*, 211 Ariz. 468, 123 P.3d 662 (2005). Defendant recognizes this holding but claims it does not address the issue he raises, which is "the proper *evidentiary standard* that must be used by the jurors when making the 'ultimate issue' determination required by A.R.S. 13-752(H)." (Reply at 2 (emphasis in original)). However, in *Baldwin*, the Supreme Court also held that it is improper for the trial court to instruct the jury that it should return a life verdict if the jurors have "a doubt" whether death is the appropriate sentence. *Id.* at ¶22. The Court found that

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This instruction in effect tells the jury that the State must prove beyond any doubt, reasonable or not, that death is the appropriate sentence in a given case. ... If the State need not establish beyond a reasonable doubt that death is the appropriate sentence, it then certainly need not prove that point beyond any doubt whatsoever. To put this matter to rest, we hold that such an instruction is improper.

Id. at ¶¶22-23.

Defendant asks for a similar instruction, which is that the jurors be instructed that they must find beyond a reasonable doubt and with utmost certainty that death is the appropriate verdict. This request suffers from the same flaws the Supreme Court noted in *Baldwin*. For those same reasons, it would be improper for this Court to give such an instruction. Therefore,

IT IS ORDERED denying Defendant's Motion to Strike the Death Notice, or Alternatively, Motion to Instruct the Jurors that a Decision that Death is the Appropriate Verdict Must be Made Pursuant to the Evidentiary Standard of Beyond a Reasonable Doubt and with Utmost Certainty.